Office-Supreme Court, U.S.
FILED
MAR 8 1985
ALEXANDER L. STEVAS,
CLERK

84-1525

# No.

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1984

JESSE FRANK WAITS
*Petitioner,*

vs.

THE STATE OF GEORGIA
*Respondent.*

## PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

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27PP

## STATEMENT OF QUESTIONS PRESENTED

Where a Defendant in police custody has not been advised of his right to remain silent as directed by *Miranda v. Arizona,* may his response to a question asked of him by a police officer be admitted as evidence against him in the State's case in chief?

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## PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

Comes now JESSE FRANK WAITS, and petitions this honorable Court to issue writ of certiorari to review the judgment of the Georgia Court of Appeals, and in support thereof shows:

### CITATION TO CASE BELOW

*Waits v. State,* Ga. Ct. App. Case No. 68680, Nov. 7, 1984. Cert. Denied, Ga Sup Ct No. 41779, Jan 7, 1985.

### JURISDICTION

The final judgment of the Georgia Court of Appeals was entered on November 7, 1984 and is set out in Appendix "A". The Georgia Supreme Court denied the writ of certiorari on January 7, 1985. Jurisdiction of this Court is invoked under 28

USC §125F(3), Petitioner having asserted below and asserting here deprivation of rights secured by the Constitution of the United States.

## CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States.

## STATEMENT OF THE CASE

The Petitioner was found guilty of failing to stop and render aid, in violation of OCGA §40-6-217. The evidence showed that at 3:30 a.m. on January 27, 1983 on Interstate Highway 85, in Gwinnett County, Georgia, Cheryl R. Curry's automobile was struck from behind. Neither Miss Curry nor anyone else saw what hit her. A vehicle registered to the Petitioner was found at the scene, and some of his belongings were found in the car, but no one was able to identify the driver of the car.

The Petitioner was found at 5:15 that morning, some 2½ to 3 miles from the scene of Miss Curry's wreck, when Officer Alexander of the Gwinnett County Police Department was dispatched to investigate a suspicious person call. Officer Alexander testified that the Petitioner was wet and was complaining of chest pains. He seemed disoriented, and, according to Officer Alexander, smelled of alcoholic beverage. Alexander took the Petitioner into custody and drove him to the Norcross, Georgia, Police Headquarters for questioning by Sergeant Willis of the Georgia State Patrol. Petitioner was never given a *Miranda* warning, and was not issued a citation until 5:42 a.m.

At around 6:00 that morning, Officer Everett of the Norcross Police reported for duty and saw the Petitioner in the station. Petitioner still had not been given a *Miranda* warning when Officer Everett asked Petitioner what he was doing there. The Petitioner's reply was "I screwed up. I hit a car on the expressway and I blowed [SIC] a nineteen [19] on the box [intoximeter]."

When the issue of the Defendant's statement came up, Judge Richard Winegarden sent the jury out and conducted a hearing pursuant to *Jackson v. Denno*, 378 US 368, 845 S. Ct. 1774, 12 LEd2d 908, 1ALR3d 1205 (1964). At the close of that hearing, Defendant moved to exclude the Defendant's statement to Officer Everett on the grounds that it was the fruit of an interrogation of the Defendant, while under arrest, by a police officer when the Defendant had not been advised of his right to remain silent and his right to counsel, as mandated by this Court. The trial court overruled Defendant's objection on the grounds that the question asked by Officer Everett was not a custodial interrogation, and the fruits of it were therefore admissible, even though, admittedly, no *Miranda* warning had been given (T-pp 121-128).

## ARGUMENT AND CITATION OF AUTHORITIES

The trial court allowed into evidence a statement made by Petitioner to a police officer while in custody and without benefit of the warnings required by *Miranda v. Arizona,* 384 US 436, 86 S. Ct. 1692, 16 LEd2d 694 (1966).

Both the trial court and the Georgia Court of Appeals conceded that for all practical purposes, the Petitioner was in custody from the moment Officer Alexander put him in the car and took him to the Norcross Police Department for questioning (Opinion, p 5).

All sides also agree that the Petitioner was never read a *Miranda* warning at any stage of the proceedings on the morning of his arrest, and all agree that Officer Everett was a police officer.

The holding in *Miranda,* even as interpreted through the years, has remained very simple. Before a person in police custody may be questioned, he *must* be given the warnings set out in the *Miranda* decision. This is so regardless of the knowledge or experience of the person in custody. *Miranda* 384 US 436, 438; 16 LEd2d 694, 720. Failure by the police to so warn a person under arrest places a heavy burden on the State to show that the statement was voluntary and that his Fifth, Sixth and Fourteenth Amendment rights were knowlingly and intelligently waived. *id,* 384 US 436, 475; 16 LEd2d 694, 724, 725.

The trial court and Georgia Court of Appeals focused on Officer Everett's state of mind when he reported to work and saw Petitioner in the station (T 126-128, Opinion, p6). In other words, the courts below asked whether Officer Everett knew he was asking a question which would lead to incriminating answer. That, however, is not the issue. The issue is the Defendant's knowledge of his rights while he is under arrest and without benefit of counsel. In *Rhode Island v. Innis,* 446 US 291, 64 LEd2d 297, 100 S.Ct. 1682 (1980), this Court expressly

rejected the contention that *Miranda* applies only to formal interrogation, choosing instead to broaden *Miranda* to cover either express questioning or its "functional equivalent". *id* 446 US 291, 300-301, 64 LEd2d 297, 307-308. In *United States v. Henry,* 447 US 264, 65 LEd2d 115, 100 S. Ct. 2183 (1980), statements made by the Defendant in custody to a paid government informant were held inadmissible, as having been obtained in violation of the Defendant's right to counsel under the Sixth Amendment. In both *Innis* and *Henry,* the focus is on the knowledge and state of mind of the individual in police custody. See *Henry,* 447 US 264, 273-274, 65 LEd2d 115, 124.

The decision of the Georgia Court of Appeals relies upon two Georgia Supreme Court cases which in turn rest upon interpretations of this Court's decisions. However, the interpretation given this Court's decisions by the Georgia Court of Appeals results is a gross misconstruction of this Court's holdings. The first of these cases is *Williams v. State,* 249 Ga 839, 295 SE2d 74 (1982), a reasonable interpretation and distinction of *Rhode Island v. Innis.* The facts of *Williams,* however, do not fit this case now before the Court at all. In *Williams,* the Defendant had been advised of his Fifth, Sixth and Fourteenth Amendment rights, then made a voluntary, spontaneous incriminating statement without any prompting by the police. Williams knew his rights and spoke anyway. The Petitioner *never* received a warning to place him on his guard. The second case the Court of Appeals relied on is *Shy v. State,* 234 Ga 816, 218 SE2d 599 (1975). The *Shy* decision rests upon several of this Court's decisions most notably *Terry v. Ohio,* 392 US 1, 20 LEd2d 889, 88 S. Ct. 1868 (1968); and anticipates the Court's ruling in *New York v. Quarles,* ____ US ____, 81 LEd2d 550, 104 S. Ct. ____ (1984). The questions asked of the Petitioner by Officer Everett, however, were not mere threshold inquiries, nor were they necessary to "secure the scene" or provide for the public's safety. An interpretation like that imposed on these

facts by the Georgia Court of Appeals allows the exception to swallow the rule.[1]

Officer Everett may not have known the Petitioner was under arrest, but the Petitioner *was* under arrest, and the question did elicit an incriminating answer. Sergeant Willis and Officer Alexander had the Petitioner under arrest and failed to warn him of his rights. From the point of his arrest forward, they and any police officer who spoke to the Petitioner ran the risk of eliciting an incriminating statement from him without his knowledge, his consent, or a knowing waiver of his right of legal counsel. That is precisely what happened. The Petitioner answered Officer Everett's informal question and gave an incriminating statement without having been warned of his rights under the Constitution, the very result *Miranda, Innis,* and the cases that have followed them was meant to prevent.

The admission into evidence of this statement by the Petitioner was error, and it was far from harmless. Outside of this statement, there is no sound evidence to show that the Petitioner was the driver of his automobile on the night of Miss Curry's wreck, or that Petitioner's car was what hit Miss Curry's from behind. The statement is the only piece of evidence that shows Petitioner left the scene of an accident. It was illegally obtained. It was not harmless. It should have been suppressed and was not. That was error and a new trial should have been granted.

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[1] Interestingly, the Court of Appeals overlooked one of its own cases which was more nearly on point than the cases cited in its opinion. In *Murray v. State,* 155 Ga App 816, 273 SE2d 219 (1980), the Defendant had been arrested, informed of his rights, and had invoked his right to counsel. Formal questioning ceased, but he and police officer who was ignorant of the Defendant's assertion of his rights became involved in an informal talk, during which the Defendant incriminated himself. The Court of Appeals found this an interrogation under *Innis, supra,* and suppressed the statement.

## CONCLUSION

Based on the foregoing, it is submitted that there has occurred a significant violation of Petitioner's rights under the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States, and that the Petition for Certiorari should be granted.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

GEORGIA, GWINNETT COUNTY

This is to certify that I have served a copy of the within and foregoing PETITION FOR CERTIORARI upon the State of Georgia by mailing a copy of the same to Mr. Herbert T. Jenkins, Solicitor, State Court of Gwinnett County, Post Office Box 344, Lawrenceville, Georgia, 30246, in a properly addressed envelope with sufficient postage affixed thereon to assure delivery.

This 8th day of March, 1985.

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# APPENDIX

## APPENDIX

COURT OF APPEALS
OF THE STATE OF GEORGIA

ATLANTA

November 7, 1984

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

68680 Jesse Frank Waits v. The State (83D-457)

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied.

Note: Please substitute old pages 7, 8 & 9 of original opinion dated September 11, 1984 for new pages 7, 8 & 9. (enclosure)

COURT OF APPEALS OF THE STATE OF GEORGIA

Clerk's Office, Atlanta Nov. 7, 1984

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Alton Hawk, Clerk.

68680. Waits v. The State. P-130

POPE, Judge.

Appellant Jesse Frank Waits was tried before a jury and found guilty of failure to stop and render aid in violation of OCGA § 40-6-271 and not guilty of driving under the influence. Appellant brings this appeal following the denial of his motion for new trial.

The evidence of record, construed in a light most favorable to the State, shows that an accident occurred on January 27, 1983 at approximately 3:30 a.m. The driver of one of the vehicles left the scene of the accident immediately afterward. The vehicle was registered to appellant Waits and several of his belongings were found inside. Appellant was located at 5:15 a.m., approximately 2½ to 3 miles from the scene of the accident, by Officer Alexander. Appellant was walking in the middle of the road. He appeared to be disoriented and smelled of alcoholic beverage, and complained of chest pains. Officer Alexander took appellant into custody and transported him to the Norcross Police Department. Appellant was not given a Miranda warning and no citation was issued until approximately 5:42 a.m. At approximately 6:00 a.m. Officer Everett, an old friend of appellant having worked with him at the Doraville Police Department, reported to Norcross police headquarters for duty. Officer Everett asked appellant what he was doing there. Appellant replied, "I screwed up. I hit a car on the expressway, and I blowed [sic] a 19 on the box (intoximeter)."

1. Appellant's first and third enumerations assign error to the trial court's failure to exclude evidence obtained by the State pursuant to an alleged illegal arrest for a misdemeanor. On the facts before us, we conclude that the warrantless arrest was proper.

OCGA § 17-4-20 (a) in pertinent part provides that a law enforcement officer may make a warrantless arrest "if the offense

is committed in his presence or within his immediate knowledge, if the offender is endeavoring to escape . . . or for other cause if there is likely to be failure of justice for want of a judicial officer to issue a warrant." Contrary to appellant's arguments, this Code section applies to arrests for misdemeanors as well as for felonies. *King v. State,* 161 Ga. App. 382 (1) (288 SE2d 644) (1982).

"To justify the arrest without warrant, the officer need not see the act which constitutes the crime take place, if by any of his senses he has personal knowledge of its commission." *Lynn v. State,* 130 Ga. App. 646 (1) (204 SE2d 346)(1974). The constitutional validity of the arrest without a warrant depends upon whether, at the moment of the arrest was made, the officer had probable cause to make it; whether at that moment the facts and circumstances within his knowledge and of which he had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the appellant had committed or was committing an offense. *Cornelius v. State,* 165 Ga. App. 794 (302 SE2d 710)(1983); *Davis v. State,* 164 Ga. App. 312 (1) (295 SE2d 131) (1982). It is well settled that an arrest may be made upon hearsay evidence and, indeed, the "reasonable cause" necessary to support an arrest cannot demand the same strictness of proof as the accused's guilt upon a trial, unless the powers of peace officers are to be so cut down that they cannot possibly perform their duties. *Duffy v. State,* 156 Ga. App. 847 (2) (275 SE2d 658)(1980); *Lynn v. State, supra* at (2).

Although the investigating officer was Sergeant Willis of the Georgia State Patrol, Officer Alexander of the Gwinnett County Police Department actually took appellant into custody. At the time he did so, Alexander had been to the scene of the accident and had received information by radio that the abandoned car was registered to appellant. Approximately 1½ hours after leaving the accident scene, Alexander had returned to normal patrol duty when he was dispatched to answer a suspicious person call at an address 2½ to 3 miles from the abandoned car.

There he found appellant who was mobile, walking in the middle of the road at 5:15 a.m. Appellant did not know where he was. He smelled of alcoholic beverage and was wet, cold, and complaining of chest pains. After being shown appellant's driver's license, Alexander asked him to get into the police car, explaining that Sergeant Willis wanted to question appellant at the Norcross Police Department regarding the accident on the expressway. We find sufficient probable cause for Alexander's arrest of appellant. "Based upon these facts, the warrantless arrest was both reasonable and necessary to prevent a failure of justice." *Williams v. State,* 166 Ga. App. 798, 800 (305 SE2d 489)(1983). See also *Richardson v. State,* 168 Ga. App. 312 (3) (308 SE2d 694)(1983). It follows that the trial court's refusal to exclude evidence gained as a result of the warrantless arrest was not error. Thus, appellant's first and third enumerations of error are without merit.

2. Appellant secondly contends that the trial court committed reversible error in allowing into evidence, over appellant's counsel's objection, the statement made by appellant to Officer Everett while in custody and without benefit of the warnings required in *Miranda v. Arizona,* 384 U.S. 436 (86 SC 1602, 16 LE2d 694)(1966).

Under the facts of the present case, it appears that, for all practical purposes, appellant was in custody from the moment he was ordered by Officer Alexander to go down to police headquarters for questioning. However, in our opinion, the question asked by Everett was at most a single threshold inquiry as to what was happening and was not an impermissible interrogation under Miranda. See *Shy v. State,* 234 Ga. 816 (I) (218 SE2d 599)(1975); *White v. State,* 168 Ga. App. 794 (310 SE2d 540)(1983).

We find nothing in the record to indicate that Officer Everett should have known that his actions were reasonably likely to elicit an incriminating response from appellant. Officer Everett was just an old friend of appellant reporting to work. He had no knowledge of the accident or of appellant's arrest. He had

no official involvement with appellant at all at the time of the remark. Rather, he was expressing surprise at running into his former co-worker at 6:00 a.m. in Norcross. The record establishes that appellant's statement was a voluntary and spontaneous response to a wholly benign question. There was no duress or threat or inducement. "A statement is not 'elicited' merely because it is uttered by an accused in custody who has yet to consult with counsel. 'A practice that the police should know is reasonably likely to evoke an incriminating response from a suspect . . . amounts to interrogation. But, since the police surely cannot be held accountable for the unforeseeable results of their words or actions, the definition of interrogation can extend only to words or actions on the part of police officers that they *should have known* were reasonably likely to elicit an incriminating response.' (Emphasis supplied.)" *Williams v. State,* 249 Ga. 839, 842 (295 SE2d 74) (1982), quoting Rhode Island v. Innis, 446 U.S. 291, 301 (100 SC 1682, 64 LE2d 297)(1980). It cannot be concluded that this question subjected appellant to police interrogation or its functional equivalent in derogation of his right to remain silent. Officer Everett cannot be held accountable for the unforeseeable results of his words or actions. *Williams v. State,* 249 Ga. at (4), *supra.* We find the trial court's ruling correct that the statement by appellant was admissible in evidence because it was not the product of custodial interrogation and therefore not violative of Miranda. *Shy v. State, supra.* See also *Tucker v. State,* 237 Ga. 777 (2) (229 SE2d 617)(1976); *Perkins v. State,* 151 Ga. App. 199 (4) (259 SE2d 193)(1979), overruled on other grounds, *Chance v. State,* 154 Ga. App. 543 (2) (268 SE2d 737)(1980).

3. Appellant enumerates as error the trial court's refusal to give certain requested jury instructions. Upon review we find no error. As applied to the facts of this case, requests to charge numbers 4 and 8 were not supported by the evidence at trial. See *Stocks v. State,* 153 Ga. App. 72 (2) (264 SE2d 552)(1980). See also *Perryman v. State,* 149 Ga. App. 54 (3) (253 SE2d 444)(1979). Regarding the legality of the warrantless arrest and evidence admitted therefrom, requests to charge numbers 5, 7

and 9 advance incorrect statements of the law. See Division 1, *supra; Knighton v. State,* 166 Ga. App. 390 (304 SE2d 512)(1983). See generally *Thompson v. State,* 248 Ga. 343 (2) (285 SE2d 685)(1981). The trial court properly charged the statute governing warrantless arrests, OCGA § 17-4-20(a). Appellant's request to charge number 10 was adequately covered by the trial court's inclusion of charges on reasonable doubt and the language of OCGA § 40-6-271. "Where the charge given is fair and complete and substantially covers the applicable principles, failure to give a requested instruction in the exact language requested is not error." *Epps v. State,* 168 Ga. App. 79, 82 (308 SE2d 234)(1983). We find no ground for reversal for any reason assigned.

4. Based upon our holding in Division 1, the trial court did not err in denying appellant's motion for mistrial. Our finding of the legality of the warrantless arrest negates appellant's contention that the evidence obtained as its result was inadmissible. We are further satisfied that the evidence adduced at trial was sufficient to authorize a rational trier of fact to find appellant guilty beyond a reasonable doubt of the offense of failing to give information and render aid in violation of OCGA § 40-6-271. See Jackson v. Virginia, 443 U. S. 307 (99 SC 2781, 61 LE2d 560)(1979).

We further find no error in the trial court's denial of appellant's motion for directed verdict made at the close of the State's evidence. A directed verdict of acquittal should be granted only where there is no conflict in the evidence and the verdict of acquittal is mandated as a matter of law. *Moore v. State,* 165 Ga. App. 65 (3) (299 SE2d 400)(1983). Appellant presented no evidence. Thus, it follows that our prior finding of the sufficiency of the evidence to authorize his conviction precludes a finding that a directed verdict of acquittal would have been proper. Clearly, the denial of this motion was correct. Based upon the foregoing, the trial court also properly denied appellant's motion for new trial.

*Judgment affirmed. Banke, P. J., and Benham, J., concur.*

[121] Norcross Police Department?

A. I've been back to Norcross about two and a half years. I worked eleven years before.

Q. How long have you been a police officer?

A. July the 4th was 27 years.

Q. Okay. Were you so employed at Norcross on the 27th of January, 1983?

A. Yes, sir.

Q. Did you have an occasion on that day to see Mr. Frank Waits?

A. Yes, sir.

Q. All right. Would you explain how it was that you saw him that day?

A. Well, I arrived at City Hall around 6:00 o'clock in the morning.

A. In the morning.

Q. It was, give or take a minute or two.

Q. What were you coming to the Police Department for at 6:00 o'clock in the morning?

A. Coming to work.

Q. Were you going on duty at that time?

A. Yes, sir.

Q. And what happened?

A. When I walked in the door, Frank was standing in the hallway; and he was wet; and he was propped on the little[122] ledge there that has a window going to the radio room.

And when I walked in the door, I said, "What are you doing here, Frank?" He says—

MR. HARRISON: Now, Your Honor, again, I would submit that there's been no showing of the Miranda Warning, as required by Jackson-Denno, and unless that officer can make that link, I'm going to make the same objection.

THE COURT: Let the jury step out.

(Whereupon, the jury retired from the courtroom.)

THE COURT: For the record, Mr. Harrison, your objection is that he was not given his Miranda rights?

MR. HARRISON: That is correct, sir. He asked a formal question, "What are you doing here?" I submit that's certainly a form of interrogation. This is after the arrest had been made, and I submit to the Court that this is within the ambient of Miranda.

MR. WILEY: If I could ask the officer a few questions, Your Honor, I think we can clear this whole thing up.

THE COURT: All right. Go ahead, Mr. Wiley.

BY MR. WILEY:

Q. Officer Everett, when you first saw Frank Waits, **[123]** did you have him under arrest for anything?

A. No, sir.

Q. Did you know he was under arrest for anything?

A. No, sir. I just walked in the door.

Q. And where was he at when you walked in the door?

A. In the hallway near the front door.

Q. Was he handcuffed?

A. No.

Q. Was anybody standing there guarding him, or watching him at the time?

A. No.

Q. All right. Was there any reason for you to believe he was in custody?

A. No.

Q. all right. Did you know Frank Waits prior to this?

A. Yes, sir, I've knowed him for years.

Q. Were you questioning him in regard to any crime that might have been committed?

A. No, sir I was surprised at him being there.

Q. And what was the purpose of your asking him "What are you doing here?" Was it for the purpose of getting a confession to any crime?

A. I was just surprised when I walked through the door; I was just wondering what he was doing there.

[124] MR. WILEY: That will speak for itself. He didn't know that Frank Waits was under arrest, if he was, at the time, and I'm not saying he was, but he was just speaking to him in a friendly manner and not interrogating him.

THE COURT: Mr. Harrison, do you have any questions of the witness?

MR. HARRISON: Yes, sir, I do have.

CROSS-EXAMINATION

BY MR. HARRISON:

Q. Officer Everett, was Sergeant Willis there at the time that you came in, the State Patrol?

A. I did not see him when I come through the door. I didn't see him until after I punched in on the time clock. They was in the room across the hall at the time.

Q. Sergeant Willis, Officer Alexander, and some others were there?

A. They was several people there, one of the State Patrol and a County officer, and two of ours.

Q. All right, sir. You knew that Sergeant Willis had made the charges against Frank Waits at the time you had this conversation, didn't you?

A. No, sir.

Q. Well, you were there?

A. At that time I hadn't even seen any one in the **[125]** hallway other than Frank.

Q. Well, you knew that Frank posted bond on these charges over there?

A. No, sir.

Q. You don't know anything about the arrest?

A. Not at that time, no. I had just got up and come to work.

Q. All right sir. Well, Frank was out in the radio room and the people were—officers were in the office right on the same hall, was it not?

A. Yes, sir.

Q. And you're saying he hadn't been charged at that time?

A. I don't know where he had been charged at that time, because I had just arrived. I didn't even know anything had happened at all.

Q. Well, was—where was Sergeant Willis of the State patrol?

A. They was in a room on the west down the hall.

Q. Did they talk to Frank after you talked with him in the hall, or before? You don't know?

A. No.

MR. HARRISON: You Honor, I submit that this evidence that if the Court will look at the charges here, the officer's testimony, he **[126]** was charged at 5:42 in the morning. It's obvious that this was done at a time after the charges were made.

If I understand the testimony correctly, the Court has sustained the objection to the testimony or conversation with Sergeant Willis. I submit that this is in the same vein, it's the fruit of the poisonous vine. If it happened after that, if he asked him, what are you doing here, it's just the same as, what are you doing.

It's interrogation, no matter what the form, and I submit that under this evidence, that this line of testimony should not be allowed to go to this jury.

THE COURT: Mr. Everett, did you know Mr. Waits to be a police officer?

THE WITNESS: Yes, sir.

THE COURT: Did you know how long he had been a police officer prior to the time?

THE WITNESS: Not Exactly; no, sir.

THE COURT: But you knew he had been a police officer in the City of Lawrenceville?

THE WITNESS: Yes, sir. He also worked with me at Doraville, when I became a radio operator in the City of Doraville. I've known Frank for years.

**[127]** MR. WILEY: Your Honor, before, when Officer Everett went into the Police Station, he didn't know that Mr. Waits—he didn't know whether he was under arrest or not. He didn't even know to suspect whether he was under arrest. He didn't know what Mr. Waits was there for to start with, and by him just being friendly and asking him what he was doing here, I submit can in no way, under these circumstances, be interpreted as being an interrogation regarding any crime. He didn't even know that there was any crime had been committed or may have been committed at the time.

MR. HARRISON: Your Honor, whether he knew it or not, I'm sure this officer wouldn't deliberately violate the rights of—but, at the same time, it's something that's occurred, I submit to you, after we have the poisonous vine, and whether he intended to do it or not, it's immaterial. It's interrogation of a person by asking a question, however it might be, of a person in custody without warning.

Here's a man that is standing there. He is in custody, and I submit to you that the mere fact he said, "What are you doing here," is not per se beyond the scope of a Jackson-Denno.

**[128]** THE COURT: All right. Mr. Harrison, while it's my determination that the time the officer asked him, "What are you doing here," or something to that effect, he was not involved in custodial interrogation, and I'm going to allow the officer to answer the question.

You can bring the jury back.

(Whereupon, the jury returned to the courtroom.)

THE COURT: You may proceed, Mr. Wiley.

BY MR. WILEY:

Q. Officer Everett, now, you said that you came in the Police Station and you saw Mr. Waits there. What, if anything, was said?

A. I asked him what was he doing there, and he said, "I screwed up. I hit a car on the expressway, and I blowed a 19 on the box."

MR. HARRISON: Your Honor, again I renew my objection.

THE COURT: The objection is noted and overruled, Mr. Harrison.

MR. HARRISON: Thank you, sir.

BY MR. WILEY:

Q. Was that all of the conversation that you had with Mr. Waits at that time?

A. Well, I told him then, I said, "Well, that sounds—

* * * * * *

Office - Supreme Court, U.S.
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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1984

NO. 84-1525

JESSE FRANK WAITES,

*Petitioner,*

-v.-

STATE OF GEORGIA,

*Respondent.*

**On Petition for a Writ of Certiorari to the Court of Appeals of Georgia**

## BRIEF IN OPPOSITION FOR THE RESPONDENT

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## QUESTION PRESENTED

Whether the Georgia Court of Appeals properly concluded that the Petitioner's statement was admissible as it was not the product of custodial interrogation.

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ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF GEORGIA

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# BRIEF IN OPPOSITION FOR THE RESPONDENT

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## PART ONE

## STATEMENT OF THE CASE

Petitioner, Jessie Frank Waites was convicted on August 11, 1983 in

the State Court of Gwinnett County on the charge of failure to give information and render aid. The Petitioner was sentenced to twelve months probation, a fine of $1,000 and 96 hours of community service. The Georgia Court of Appeals affirmed the Petitioner's conviction on November 7, 1984. Waites v. State, 172 Ga. App. 524, 323 S.E.2d 624 (1985). The Supreme Court of Georgia denied certiorari on January 7, 1985. Waites v. State, No. 41779 (Ga. decided Jan. 7, 1985)..

## STATEMENT OF FACTS

On January 27, 1983 at approximately 3:30 a.m. an accident, involving a car registered to the Petitioner, occurred in Gwinnett County, Georgia. The police arrived at the scene but were unable to locate the driver of the car registered to the Petitioner. The police did discover several items belonging to the Petitioner in that car.

Approximately 2 hours later the Petitioner was found walking approximately 2 1/2 to 3 miles from the scene of the accident. The Petitioner appeared to be disoriented and intoxicated. The Petitioner was then placed in custody and taken to a local police station. The Petitioner

was not given the Miranda warnings. A citation for the Petitioner was issued at approximately 5:42 a.m. At approximately 6:00 a.m., while the Petitioner was waiting at the police station, an officer of the Doraville Police Department who was a friend of the Petitioners reported for duty. Upon seeing the Petitioner at the police station the officer asked the Petitioner what he was doing there. The Petitioner then replied, "I screwed up. I hit a car on the expressway and I blowed (sic) a nineteen on the box (intoximeter)."

At the Petitioner's trial the prosecutor attempted to introduce the Appellant's statement to the officer. A Jackson v. Denno hearing was held

and the trial court found that while no Miranda warnings had been given to the Petitioner prior to this statement, the statement was admissible as it was not the product of custodial interrogation. The Georgia Court of Appeals affirmed the trial court's ruling as to the admissibility of the Petitioner's statement.

## PART TWO

## REASONS FOR NOT GRANTING THE WRIT

A. THE TRIAL COURT AND THE GEORGIA COURT OF APPEALS PROPERLY CONCLUDED THAT THE PETITIONER'S STATEMENT WAS ADMISSIBLE AS IT WAS NOT THE PRODUCT OF CUSTODIAL INTERROGATION.

The Petitioner contends that the trial court and the Georgia Court of Appeals erred in ruling that the Appellant's statement was admissible. The Petitioner contends that the statement should not have been allowed into evidence as he had not been given

the Miranda warnings and was in custody.

The Respondent would respectfully submit that, while the Petitioner was in custody and had not been given the Miranda warnings, the trial court and Court of Appeals were correct in ruling that the statments were admissible as the statements were clearly not the product of any "interrogation".

This Court, in Rhode Island v. Ennis, 446 U.S. 291 (1980) held that:

> "Interrogation," as conceptualized in the Miranda opinion, must reflect a measure of compulsion above and beyond that inherent in custody itself.

We conclude that the Miranda safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent. That is to say, the term "interrogation" under Miranda refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. The latter portion of this definition

focuses primarily upon the perceptions of the suspect, rather than the intent of the police. This focus reflects the fact that the Miranda safeguards were designed to vest a suspect in custody with an added measure of protection against coercive police practices, without regard to objective proof of the underlying intent of the police. A practice that the police should know is reasonably likely to invoke an incriminating response from a suspect thus amounts to interrogation. But, since the police surely cannot be

held accountable for the unforseeable results of their words or actions, the definition of interrogation can extend only to words or actions on the part of the police officers that they should have known were reasonably likely to elicit an incriminating response.

Rhode Island v. Ennis at 300, 301, 302 (Emphasis supplied).

The Respondent would respectfully submit that, based upon the above holding of this Court, the statements of the Petitioner were not the product of an "interrogation." A friend of the Petitioner, which friend happened to be a police officer, reported for

duty and saw the Petitioner waiting at the police station. The officer admitted that he did not know the Petitioner was in custody or had been charged with any offense. The Officer saw the Petitioner standing in the hallway, noticed that the Petitioner was wet and asked him "What are you doing here, Frank?" The officer stated that the Petitioner was not handcuffed, that no one was guarding the Petitioner, and that he had no reason to believe that the Petitioner was in custody. Therefore, the Respondent would submit that this officer could not have known that his question would have produced any type of incriminating response.

Respondent would therefore respectfully submit that the Petitioner's statement could properly be introduced into evidence. The statement itself was not the product of interrogation but was in effect a voluntary response to a question asked of the Petitioner by a friend, which friend happened to be a police officer. The Respondent would submit that this was clearly not interrogation as defined in Miranda v. Arizona, 384 U.S. 436 (1963) as it was not the product of any conscious effort on the part of the arresting authorities to obtain information from the Petitioner. Therefore, the statement was not taken in violation of Miranda, supra, and thus both the

trial court and the Georgia Court of Appeals properly determined that the statement could be introduced into evidence.

## CONCLUSION

The Respondent would respectfully submit that as the Georgia Court of Appeals correctly applied the decisions of this Court, that no federal constitutional issue exists which would justify the granting of a writ of certiorari. The Respondent would therefore request that this Court deny the petition for a writ of certiorari filed on behalf of the Petitioner, Jessie Frank Waites.

## CERTIFICATE OF SERVICE

I, WILLIAM B. HILL, JR., a member of the bar of the Supreme court of the United States and counsel of record for Respondent, hereby certify that in accordance with the Rules of the Supreme Court of the United States, I have this day served a true and correct copy of this Brief in Opposition for the Respondent upon the Petitioner by depositing three copies of same in the United States Mail, with proper address and adequate postage to:

Samuel H. Harrison
Harrison & Harrison
P. O. Box 88
Lawrenceville, GA 30246-0088

Office of the Solicitor
State Court of Gwinnett County
189 Pike Street
Lawrenceville, Georgia 30245

This 13TH day of May, 1985.

/s/

WILLIAM B. HILL, JR.
Senior Assistant
Attorney General
Counsel of Record
for Respondent.